

HOUSE BILL 2101
By Beavers

AN ACT to amend Tennessee Code Annotated, Section 18-6-109;
Title 36, Chapters 3 and 4, and Title 68, Chapter 3, Part 4,
relative to covenant marriages.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 3, is amended by adding
Sections 2 through 8 as a new part.

SECTION 2.

(a) A covenant marriage is a marriage entered into by one (1) male and one (1) female who understand and agree that the marriage between them is a lifelong relationship. Parties to a covenant marriage shall receive counseling emphasizing the nature and purposes of marriage and the responsibilities thereto. Only when there has been a complete and total breach of the marital covenant commitment may the non-breaching party seek a declaration that the marriage is no longer legally recognized.

(b) A man and woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license, and executing a declaration of intent to contract a covenant marriage. The application for a marriage license and the declaration of intent shall be filed with the county clerk who issues the marriage license.

SECTION 3.

(a) A declaration of intent to contract a covenant marriage shall contain all of
the following:

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(1) A recitation by the parties to the following effect:

A COVENANT MARRIAGE

"We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received premarital counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling. With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Tennessee law on Covenant Marriage and we promise to love, honor, and care for one another as husband and wife for the rest of our lives."

(2)(A) An affidavit by the parties that they have received premarital counseling from a minister of any denomination, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a licensed counselor under Tennessee Code Annotated, Title 63, Chapter 22. Such counseling shall include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce or by divorce after a judgment of separation from bed and board.

(B) A notarized attestation, signed by the counselor and attached to or included in the parties' affidavit, confirming that the parties were counseled as to the nature and purpose of the marriage and the grounds for termination thereof and an acknowledgment that the counselor provided to the parties the informational pamphlet developed and promulgated by the secretary of state.

(3)(A) The signature of both parties witnessed by a notary.

(B) If one or both of the parties are minors, the written consent or authorization of those persons required to consent to or authorize the marriage of minors.

(b) The declaration shall contain two (2) separate documents, the recitation and the affidavit, the latter of which shall include the attestation either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one (1) of which shall be retained by the parties. The parties shall file the other copy, together with the affidavit and attestation, with the county clerk.

SECTION 4.

(a) On or after October 1, 1998, previously married couples may execute a declaration of intent to designate their marriage as a covenant marriage to be governed by the laws relative thereto.

(b)(1) This declaration of intent in the form and containing the contents required by subsection (c) of this section shall be presented to the county clerk who issued the couple's marriage license and with whom the couple's marriage certificate is filed. If the couple was married outside of this state, a copy of the foreign marriage certificate, with the declaration of intent attached thereto, shall be filed with the county clerk in the county where the couple is domiciled. The officer shall make a notation on the marriage certificate of the declaration of intent of a covenant marriage and attach a copy of the declaration to the certificate.

(2) On or before the tenth day of each calendar month, the county clerk shall forward to the division of vital records each declaration of intent of a covenant marriage filed during the proceeding calendar month pursuant to this section.

(c)(1) A declaration of intent to designate a marriage as a covenant marriage shall contain all of the following:

(A) A recitation by the parties to the following effect:

A COVENANT MARRIAGE

“We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We understand the nature, purpose, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling. With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Tennessee law on Covenant Marriage, and we renew our promise to love, honor, and care for one another as husband and wife for the rest of our lives.”

(B)(i) An affidavit by the parties that they have discussed their intent to designate their marriage as a covenant marriage with a minister of any denomination, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a licensed counselor under Tennessee Code Annotated, Title 63, Chapter 22. Such counseling shall include a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce after a judgment of separation from bed and board.

(ii) A notarized attestation, signed by the counselor and attached to the parties' affidavit, acknowledging that the counselor provided to the parties the information pamphlet developed and promulgated by the secretary of state.

(iii) The signature of both parties witnessed by a notary.

(2) The declaration shall contain two (2) separate documents, the recitation and the affidavit, the latter of which shall include the attestation either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one (1) of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed as provided in subsection (b).

SECTION 5.

(a) Notwithstanding any other law to the contrary and after the parties obtain counseling, a spouse to a covenant marriage may obtain a judgment of divorce only upon proof of any of the following:

(1) The other spouse has committed adultery.

(2) The other spouse has committed a felony and has been sentenced to death or continuous confinement.

(3) The other spouse has abandoned the matrimonial domicile for a period of one (1) year and constantly refuses to return.

(4) The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one (1) of the spouses.

(5) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years.

(6)(A) The spouses have been living separate and apart continuously without reconciliation for a period of one (1) year from the date the judgment of separation from bed and board was signed.

(B) If there is a minor child or children of the marriage, the spouses have been living separate and apart continuously without reconciliation for a period of one (1) year and six (6) months from the date the judgment of separation from bed and board was signed; provided, however, if abuse of a child of the marriage or a child of one (1) of the spouses is the basis for which the judgment of separation from bed and board was obtained, then a judgment of divorce may be obtained if the spouses have been living separate and apart continuously without reconciliation for a period of one (1) year from the date the judgment of separation from bed and board was signed.

(b) Notwithstanding any other law to the contrary and subsequent to the parties obtaining counseling, a spouse to a covenant marriage may obtain a judgment of separation from bed and board only upon proof of any of the following:

(1) The other spouse has committed adultery.

(2) The other spouse has committed a felony and has been sentenced to death or continuous confinement.

(3) The other spouse has abandoned the matrimonial domicile for a period of one (1) year and constantly refuses to return.

(4) The other spouse has physically or sexually abused the spouse seeking the judgment of separation or a child of one (1) of the spouses.

(5) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years.

(6) On account of habitual intemperance of the other spouse, or excesses, cruel treatment, or outrageous conduct of the other spouse, if such habitual intemperance, or such ill-treatment is of such a nature as to render their living together insupportable.

SECTION 6.

(a) Unless judicially separated, spouses in a covenant marriage may not sue each other except for causes of action pertaining to contracts; for restitution of separate property; for separation from bed and board in covenant marriages, for divorce, or for declaration of nullity of the marriage; and for causes of action pertaining to spousal support or the support or custody of a child while the spouses are living separate and apart, although not judicially separated.

(b)(1) Any court which has jurisdiction over divorce proceedings, has jurisdiction of an action for separation from bed and board in a covenant marriage, if:

(A) One (1) or both of the spouses are domiciled in this state and the ground therefor was committed or occurred in this state or while the matrimonial domicile was in this state.

(B) The ground therefor occurred while either or both of the spouses were domiciled elsewhere, if the person obtaining the separation from bed and board was domiciled in this state before the cause of action accrued and is domiciled in this state when the cause of the action is filed.

(2) An action for a separation from bed and board in a covenant marriage shall be brought in a county where either party is domiciled, or in the county of the last matrimonial domicile.

(3) The venue provided herein may not be waived, and a judgment of separation rendered by a court of improper venue is void.

(c) Judgments on the pleadings and summary judgments shall not be granted in any action for separation from bed and board in a covenant marriage.

(d) In a proceeding for a separation from bed and board in a covenant marriage or thereafter, a court may award a spouse all incidental relief afforded in a proceeding for divorce, including but not limited to spousal support, claims for contributions to education, child custody, visitation rights, child support, injunctive relief and possession and use of a family residence.

SECTION 7.

(a)(1) Separation from bed and board in a covenant marriage does not dissolve the bond of matrimony, because the separated husband and wife are not at liberty to marry again, but it puts an end to their conjugal cohabitation, and to the common concerns, which existed between them.

(2) Spouses who are judicially separated from bed and board in a covenant marriage shall retain that status until either reconciliation or divorce.

(b)(1) The judgment of separation from bed and board is retroactive to the date on which the original petition was filed in the action in which the judgment is rendered.

(2) Upon reconciliation of the spouses, the community shall be reestablished between the spouses, as of the date of filing of the original petition in the action in which the judgment was rendered, unless the spouses execute prior to the reconciliation a matrimonial agreement that the community shall not be reestablished upon reconciliation. Such matrimonial agreement shall not require court approval.

SECTION 8. The secretary of state shall, before October 1, 1998, promulgate an informational pamphlet, entitled "Covenant Marriage Act", which shall outline in sufficient detail the consequences of entering into a covenant marriage. The informational pamphlet shall be made available to any counselor who provides marriage counseling as provided for by this act.

SECTION 9. Tennessee Code Annotated, Section 18-6-109(a), is amended by adding the following new subdivision:

(3) To designate, if applicable, that the marriage is a covenant marriage.

SECTION 10. Tennessee Code Annotated, Section 36-3-103, is amended by adding the following new subsection:

(d) The clerk shall also indicate on the marriage license whether the parties intend to enter into a covenant marriage.

SECTION 11. Tennessee Code Annotated, Section 36-3-104, is amended by adding the following new subsection:

(c) If the parties intend to contract a covenant marriage, the application for a marriage license shall include the following:

We, [name of intended husband] and [name of intended wife], do hereby declare our intent to contract a covenant marriage, and accordingly, have executed a declaration of intent which is attached.

SECTION 12. Tennessee Code Annotated, Section 36-4-101, is amended by adding at the beginning of the section the language "Except in the case of a covenant marriage".

SECTION 13. Tennessee Code Annotated, Section 36-4-102, is amended by adding the following new subsection:

(c) A spouse to a covenant marriage may not receive a divorce from bed and board except as provided in Section 5 of this act.

SECTION 14. Tennessee Code Annotated, Section 68-3-401(b), is amended by adding between the second and third sentences the following language:

The form for a certificate of marriage shall contain a place for the designation of the marriage as a covenant marriage.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. Section 8 of this act shall take effect upon becoming a law, the public welfare requiring it. All other sections of this act shall take effect October 1, 1998, the public welfare requiring it.